IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Satyamani Tiwari v. State of Rajastha & Ors.

SBCivil Writ Petition No.2878/2003
under Article 226 of the Constitution of India.

Date of Order :: 11th August, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.P.Choudhary, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.
Mr. Tejmal Ranka, for the respondent No.3.

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BY THE COURT :

The petitioner is a member of Rajasthan Police Subordinate Service and is eligible to be considered for recruitment by way of promotion to Rajasthan Police Service created under the Rajasthan Police Service Rules, 1954 (hereinafter referred to as “the Rules of 1954”). The Departmental Promotion Committee constituted under the Rules of 1954 that met on 19.5.2003 denied promotion to the petitioner as Deputy Superintendent of Police in Rajasthan Police Service on the count that he suffered with a minor punishment of censure under an order dated 30.6.1994, hence this petition for writ is preferred and the

issue requires adjudication is that as to what should be the determinative factors while selecting a inspector for recruitment to Rajasthan Police Service by way of promotion under the criteria of seniority-cum-merit.

Before coming to merits, I would like to state that the entire pleadings of the case nowhere mention about the vacancy year in that the petitioner was superseded by his junior. The only reference of supercession is given in para 18 of the writ petition. It is surprising enough that State of Rajasthan in its reply simply stated that the averments contained in para 18 of the writ petition need no comments. The document Anx.13 referred in para 18 of the writ petition is an order of posting of newly recruited members of Rajasthan Police Service through promotion and in that order name of the respondent No.3 appears at Sr.No.30 who is said to be junior than the petitioner in the cadre of inspectors.

Be that as it may, this Court by an order dated 9.1.2006 directed the respondents to make available the record of the Departmental Promotion Committee relating to the promotions impugned for perusal of the Court and in pursuant thereto the record was shown to the Court on 7.8.2006. From perusal of the record it was found that the Departmental Promotion Committee that met on 19.5.2003

to consider the candidature of the eligible persons for promotion to Rajasthan Police Service (Junior Scale) did not find the petitioner suitable for promotion because of the penalty of censure awarded under an order dated 30.6.1994.

The recruitment as prescribed under Rule 7 of the Rules of 1954 can also be made by way of promotion of inspectors and such promotion is required to be made under the criteria of merit and seniority-cum-merit in proportion of 50:50 according to sub-rule(4) of Rule 28(A) of the Rules of 1954, that reads as follows:-

> "28(A)(4)Selection for promotion in the regular line of promotion from the post/posts not included in Service to the lowest post or category of post in the Service shall be made strictly on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50:50."

Rule 27 of the Rules of 1954 provides that for the purpose of recruitment to Rajasthan Police Service by way of promotion a selection strictly on seniority-cum-merit shall be made from among all the Inspectors eligible for promotion under the Rules. Rule 27 referred above reads as under:-

> "27.Criteria for selection.-(1)For purposes of recruitment by promotion, a selection

> strictly on seniority-cum-merit shall be made from among all the Inspectors, who are eligible for promotion under the provisions of these Rules."

The procedure for selection is prescribed under Rule 28 of the Rules of 1954, relevant portion of that reads as under:-

> "28.Procedure for Selection.-(1)As soon as it is decided that a certain number of vacancies in the Service will be filled by promotion, the Inspector General shall call upon all the Deputy Inspectors General to submit to him their recommendations in this connection by a prescribed date. Each Deputy Inspector General shall, in his turn, call for recommendations in the same manner from the Superintendents under him.
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> (2)On receipt of such orders, each Superintendent shall prepare in the form prescribed in Schedule IV a list of all the Inspectors in order of seniority who are employed under him and are eligible for promotion under the provisions of these Rules and shall record therein his remarks against each candidate with regard to his suitability for promotion. He shall also prepare another list in order of merit of candidates whom he considers suitable for promotion. He shall then submit the two lists by the prescribed date to the Deputy Inspector General concerned along with the personal files of those candidates whom he recommends for promotion, under proviso to sub-rule(9).

(3)On receipt of the lists from the Superintendents each Deputy Inspector General shall prepare a consolidated list in the form prescribed in Schedule IV of candidates in order of seniority considered suitable for promotion by the Superintendents and shall add his own remarks against each candidate with regard to his suitability for promotion under proviso to sub-rule 9. He may also add to his list the names of such candidates who, though not recommended by the Superintendent concerned, are considered suitable by him for promotion. He shall also prepare another list showing the order of merit of candidates whom he considers suitable for promotion and shall forward by the prescribed date both the lists to the Inspector General along with the personal files and character rolls, if kept with him, of the candidates recommended for promotion. He shall also forward to the Inspector General the lists received from the Superintendents.

(7)Inspector General of Police shall scrutinize the lists and make preliminary screening of the candidates recommended therein. He shall then prepare a list of candidates who are considered by him as suitable for promotion adding his own remarks against each giving cogent reasons against those whom he does not consider suitable. The list shall contain names of Inspectors not less than three times the number of vacancies. He shall also cause the character roll of each candidate recommended

by him and also of that superseded if any to be placed with his personal file.

(9)For the posts falling in general cadre a Committee consisting of the Chairman of the Commission or a member nominated by him as Chairman, the Secretary to the Government in the Home Department, or the Special Secretary concerned nominated by him, the Special Secretary to Government in the Department of Personnel, the Inspector General of Police as members and Additional Inspector General of Police (Senior most) as Member-Secretary of the Committee and for the posts included in Schedule 1-A, a Committee consisting of the Chairman of the Commission or a member nominated by him as Chairman, the Special Secretary to the Government in the Department of Personnel or his nominee not below the rank of Deputy Secretary, Secretary to the Government in the Home Department, the Inspector General of Police as Members and the Director, State Police Wireless as Member-Secretary to the Committee. (hereinafter called the Selection Committee) shall consider the cases of all the candidates recommended by the Inspector General of Police as well as those not considered suitable by him, interviewing such of them as they consider necessary and shall select a number of candidates equal to the number of vacancies in the Service to be filled by promotion including likely officiating appointments and shall arrange their names in a list in a order of seniority. If any person's name recommended in the previous year is deleted from the select list or a person ignored in the

previous year is selected in the subsequent year, the reasons for such deletion or addition shall be recorded by the Selection Committee. They shall also select from the remaining candidates a number which, shall be 50% of the total number of candidates selected for the first list and shall arrange their names in a supplementary list in order of seniority.

Provided that in case any Member or Member-Secretary, as the case may be, constituting the Committee has not been appointed to the post concerned, the officer holding charge of the post for the time being shall be the Member or Member-Secretary, as the case may be, of the Committee.

(10)The two lists prepared by the Committee shall be forwarded by Government to the Commission along with the character rolls, the personal files, and relevant extracts from the lists in the form prescribed in Schedule IV received from the various recommending authorities, relating to the candidates named in the aforesaid two lists, and also of those superseded, if any, and the Commission shall be requested to advise on their suitability for promotion to the Service. If the Commission are of opinion that any candidate mentioned in the first list is not suitable for promotion; they shall consider the names in the supplementary list in the order in which they are placed in the list and shall advise on the suitability of so many of the candidates in the supplementary list as may be necessary to replace the candidates not approved in the first list."

By reading of Rules 27 and 28(A)(4) of the Rules of 1954 it is apparent that the recruitment to Rajasthan Police Service by way of promotion is to be made by adopting the criteria of merit and seniority-cum-merit in proportion of 50:50 and the promotion even under the criteria of seniority-cum-merit is by way of selection from among the eligible inspectors. According to Rule 28 of the Rules of 1954 a list of eligible inspectors in order of seniority and a list of eligible inspectors in order of merit is required to be prepared. In both the lists remarks with cogent reasons pertaining th suitability for promotion of the candidate enlisted are to be mentioned. The Departmental Promotion Committee is required to consider candidature of all the persons enlisted including the persons not found suitable for promotion at department level. The Departmental Promotion Committee is further required to prepare two separate lists afresh, one in order of seniority and another in order of merit from among the persons recommended for promotion under the criteria of seniority-cum-merit and merit respectively. The recommendations made by the Departmental Promotion Committee is further subject to scrutiny by Rajasthan Public Service Commission. The State Government that is the appointing authority is empowered to make the final select list. The entire scheme enshrined under the Rules of 1954 for recruitment to Rajasthan Police Service by way of

promotion emphasise for testing suitability of an eligible person while considering his candidature for the purpose of promotion to Rajasthan Police Service. The suitability in context to the criteria of seniority-cum-merit means the minimum merit for efficiency of administration and it does not require comparison of merits of two aspirants. From perusal of the provisions of Rule 28 of the Rules of 1954 it is also apparent that the cogent reasons are required to be recorded while recommending a person for promotion and also while denying a person for promotion.

As stated above, the only reason for denying promotion to the petitioner or to say not considering the petitioner suitable for promotion to Rajasthan Police Service is imposition of minor penalty that is of censure. This Court in the case of Het Ram Dudi v. State of Rajasthan & Anr., reported in 1992(3) WLC (Raj.) 726, while dealing with the issue as to whether punishment imposed on an employee can be the sole basis for declaring him or treating him unsuitable or unfit for promotion, held as under:-

> "49.It cannot also be ignored that punishment is imposed on an employee for a particular lapse or act of delinquency. Such act of delinquency may or may not have any impact on or relevance to the efficiency of the employee for the period under consideration. The punishment itself may relate to a delinquency committed in the remote past

having no direct nexus or relation with his performance for the period under consideration. An employee may have performed well or may have been rated as outstanding during the relevant period for which his record is to be looked into and at the same time may have earned a punishment for an act or omission of remote past or may have received a very minor punishment. There may be case of punishment imposed in relation to an act or omission of distant past and in the meantime, the employee may have received promotion because the competent authority could not decide as whether it should hold a departmental inquiry at all or not. There may be cases where departmental inquiry has been prolonged for years not on account of fault on the part of the employee but on account of reasons for which he is least responsible. All these factors will have to be objectively considered while taking into consideration punishment imposed on an employee at the time of consideration of his promotion. Efficiency and misconduct are two distinct concepts in service jurisprudence and this distinction will have always to be kept in mind while judging the suitability/fitness/merit of an employee to shoulder the responsibility of a higher post. This distinction has lucidly been brought out out in Union of India v. S.J.Ahmed : 1979 SLJ 308.

52.The proposition which emerges from these decisions is that while considering the case of an employee for promotion and although the competent authority is entitled to take into consideration punishment imposed on such employee alongwith other relevant record,

> promotion cannot be denied to him solely on the basis of punishment. The competent authority is bound to objectively consider the other service record along with the punishment. The punishment imposed on the employee is required to be examined with reference to year of punishment, the nature of charge/allegation, the severity of punishment. If on the basis of punishment or any other adverse material, the employee is to be superseded or denied promotion the competent authority must record reasons in support of its decision. Recording of reasons is a must for fairness in the decision of the competent authority. Since such matters fall exclusively in the realm of administrative decisions, reasons need not be communicated to employee. Nevertheless even in such matters record must show that the competent authority has applied its mind and then taken the decision. If a challenge is made to the decision of the Government before a court of law, it becomes the duty of the concerned authority to place the record before the Court in order to satisfy the Court that the decision is not arbitrary and is founded on good reasons."

In the instant matter I have perused entire record of the case. As a matter of fact the Departmental Promotion Committee in most cursory manner rejected candidature of the petitioner merely by saying that the petitioner is not suitable for promotion being suffered with a minor penalty under an order dated 19.4.1993. In view of the provisions of Rule 28 of the Rules of 1954 and also in view of the

law laid down by this Court in Het Ram Dudi's case (supra) while examining suitability of an incumbent various factors are required to be taken into consideration and imposition of a minor penalty cannot be a sole criteria for denying promotion to a person. The procedure for selection under Rule 28 in quite unambiguous terms states that while preparing a list under the criteria of seniority-cum-merit remarks are required to be given for not recommending a person for promotion being unsuitable. No such remarks are available in the record of entire selection proceedings including the minutes of Departmental Promotion Committee. The Departmental Promotion Committee was required to see the entire service record including the annual confidential reports/annual performance appraisal reports, awards/commendation certificates, entries relating to punishments or pending departmental enquiries etc. and then by analysis of the same an objective remark in relation to suitability was required to be made. The Departmental Promotion Committee should have recorded that how the misconduct for that the petitioner was penalised by a minor penalty effected his efficiency to the extent that he is not suitable to be promoted to Rajasthan Police Service. While doing so the committee must keep in mind that under the criteria of seniority-cum-merit it is the seniority that will prevail as the term “merit” under the criteria concerned means the minimum merit necessary for

efficiency of administration. From perusal of the record it appears that no such exercise was done while rejecting candidature of the petitioner for promotion to Rajasthan Police Service.

In view of whatever discussed above, I am of the considered opinion that the candidature of the petitioner was neither objectively considered by the Departmental Promotion Committee for promotion nor was considered in accordance with the provisions of Rule 28 of the Rules of 1954.

Accordingly, this petition for writ is allowed. The respondents are directed to consider the candidature of the petitioner afresh for the purpose of promotion to the Rajasthan Police Service from the date person junior to him (respondent No.3) was promoted as such.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.